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USPOLAD,

TOKYO. 11

A-677, April 10, 1952

Subject: FCN treaty. Mission's despatch No. 1331, March 27, with enclosures.

There follow Department's comments on the memoranda of conversation covering the first two meetings.

Enclosure No. 1

Preamble

Department accepts the proposed change in word order and deletion of word "otherwise", so that the relevant part of the Preamble would read as set forth on page 5 of enclosure No. 1.

The Department accepts also the Japanese proposal that the reference to national and m-f-n treatment be amended to read: "the principles of national treatment and of unconditional most-favored-nation treatment". This approach is similar to that adopted to solve a similar problem in the Greek treaty (q.v.), and is to be preferred over the alternative of phrasing the Japanese version in a way conspicuously different from the English version. The Department's objective of establishing the canon of construction generally to be applicable to the national treatment clause is sufficiently satisfied, in the present instance, by the record of mutual understanding contained in the memorandum of conversation.

Article I

The Department considers this general provision for "equitable" treatment to be merely desirable as a standard proposition, and not indispensable in the case of a particular negotiation where resistances or difficulties emerge. In view of the attitude shown by the Japanese and of the tenor of the discussion, the possibility

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possibility seems open that the provision may be capable of causing more friction than benefit. The Department therefore believes that it may appropriately be dropped. The Mission accordingly is authorized to agree to the deletion of Article I when the subject is next brought up.

Article II

The Department is perfectly willing to introduce a most-favored-nation clause into clause (a) of paragraph 1, but not into clause (b). Mr. Yukawa is quite mistaken in supposing that this government has, in recent times at least, entered into most-favored-nation commitments with other countries with respect to immigration generally. In fact, it has been clearly impossible for this government to do so since the enactment of the 1921 immigration Act, inasmuch as the "national origins" quota system necessarily means that each country has its own separate and distinct quota which cannot be made the basis for any other country's quota. The Japanese should appreciate that the Department cannot entertain any treaty proposal (e. g., a general immigration most-favored-nation clause) which would have the effect of changing the quota system, that system being basic to the immigration law of the U. S. (It is of interest to note that, if the new immigration bill passes, the Japanese would be entitled to a quota [185 according to one computation] materially above the minimum 100 quota enjoyed by the majority of countries, some of them more populous than Japan).

The statement at the end of the second paragraph under Article II, on page 7 of enclosure 1, and at the beginning of the first full paragraph on page 8, regarding the views of the Department concerning the most-favored-nation clause, is properly applicable to paragraph 2 of Article II rather than to paragraph 1 thereof. Perhaps this point is clarified by the remark of Mr. Bassin set forth in the first full paragraph on page 3 of enclosure No. 2. The Department would not wish the Japanese to suppose that its opposition to attaching an most-favored-nation clause to paragraph 1 (b) is in any way related to the reasoning pertinent to paragraph 2.

Enclosure No. 2

Enclosure No. 2

Article II (continued)

The last sentence of the second full paragraph of the discussion - to the effect that paragraph 1(a) provides rights of entry for the purpose of engaging in the activities listed in Articles VII and VIII, as such - is quite erroneous, as already mentioned in Department's telegram No. 2663, April 4. The wording of paragraph 1 (a) is not intended, and is not susceptible of being interpreted as tending to, ~~xxxerious~~ a breaching of U. S. immigration law. It is of course highly appropriate that the Japanese be disabused of any possible misunderstanding they may consequently have in the premises; and it goes without saying that a later memorandum of conversation should include a specific correction of the error in reference.

The phrase "related commercial activities" in paragraph 1 (a) means solely such activities as are necessarily incidental and proper to the major purpose of that subparagraph: namely, the carrying on of international trade between the territories of the two signatories. The visa granted by the U.S. under paragraph 1 (a) is the "sec. 3 (6)" or "treaty-trader" visa, as set forth in the consular regulations and as provided in sec. 203 (6) of the immigration law. That visa is not granted for carrying on domestic commercial, industrial, financial, etc. activities. The reference to "related commercial activities" is included simply to indicate the liberal interpretation to be given to paragraph 1 (a), within its proper scope, rather than to enlarge that scope. The "related commercial activities" are those which must be carried on as an integral element in the carrying on of the international trade visualized. For example, one engaged in the import-export business would presumably be entitled to maintain the wholesale purchasing, assembling and distribution facilities, and the warehouses, essential to the successful conduct of that business; but it would not follow, on the other hand, that he could get a "3(6)" visa for the purpose of operating a retail department store.

Article III

Article III

Paragraph 1. Insertion of "unlawful" before "molestations" acceptable.

The explanation at the bottom of page 3 of enclosure No. 2, regarding the applicability of the treaty to individual private molestations, is correct on the premise that the State has provided a system of police and courts which function to give the molested person protection and redress in the ordinary way.

The fact that both Japan and the U. S. have an enlightened and decent system of law and justice makes it all the more easy and proper for them jointly to subscribe to the international law minimum, and thus make a further joint contribution to the principle that international law should prevail over the world. These treaties are important as precedents, and the principles agreed to by leading nations can have a favorable influence on the content of treaties with the others. It hardly need be said that in certain countries the "national treatment" standard is an altogether inadequate standard for the foreigner; and, on the other hand, the inclusion of the international law standard in a U.S.-Japanese treaty does not carry any implication that Japan is in the category of indecency any more than would be the U.S.

Article IV

Aside from health insurance, is the Japanese social security system generally of the compulsory insurance type? While the wording of paragraph 2 as proposed by the Department is premised on the circumstances of the U.S. system, the Department would want the final wording to reflect effectively the circumstances of both systems, to the end that the treaty provision be in fact reciprocal. The Department infers from the remark of Mr. Adams, that the present wording of the paragraph is adequately adapted to Japanese legislation; otherwise, the Department will suggest that adaptations in wording be considered, as was done in the case of the Danish treaty (q.v.)

General